

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-4249
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76-4042

United States Court of Appeals
FOR THE SECOND CIRCUIT

PITTSTON STEVEDORING CORPORATION and
THE HOME INSURANCE COMPANY,
Petitioners,

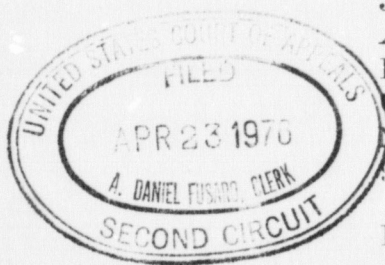
v.

ANTHONY DELLAVENTURA,
Respondent,
and

DIRECTOR, OFFICE OF WORKERS COMPENSATION
PROGRAMS, U.S.D.L.,
Party in Interest.

B
P/S

APPENDIX



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914—CR 1-4096

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Petition for Review.

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

PITTSTON STEVEDORING CORPORATION and
THE HOME INSURANCE COMPANY,

Petitioners,

v.

ANTHONY DELLAVENTURA,

Respondent.

The Pittston Stevedoring Corporation and the Home Insurance Company, hereby petition the Court for review of the Order of the Benefits Review Board, United States Department of Labor, entered on October 9, 1975, which affirmed an Order of Administrative Law Judge Edwin S. Bernstein, which Order established that the claim of Anthony Dellaventura, Respondent, comes within the purview of the Longshoremen's and Harbor Workers Compensation Act as amended, 33 U.S.C. et seq.

Dated: January 19, 1976.

JOSEPH F. MANES
Attorney for Petitioners
Finney Farm
Croton-on-Hudson
New York, 10520
Tel. 914—CR 1-4096

Decision and Order of the Benefits Review Board.

U.S. DEPARTMENT OF LABOR
BENEFITS REVIEW BOARD
Washington, D.C. 20210

ANTHONY DELLAVENTURA

Claimant-Respondent

v.

PITTSTON STEVEDORING CORP.

and

THE HOME INSURANCE COMPANY

Employer/Carrier-Petitioners

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR

Party in Interest

FILED AS PART OF THE RECORD

OCT 09 1975
(date)

CAROLYN D. MCCREADY
(Clerk)

Benefits Review Board

BRB No. 75-133

DECISION

Appeal from Decision and Order of Edwin S. Bernstein,
Administrative Law Judge, United States Department of
Labor.

Decision and Order of the Benefits Review Board.

Angelo C. Gucciardo (Israel, Adler, Ronca & Gucciardo),
New York, New York, for the claimant.

Joseph F. Manes (Minore and Manes), New York, New
York, for the employer and carrier.

Ronald Meisburg (William J. Kilberg, Solicitor of Labor,
Laurie M. Streeter, Associate Solicitor), Washington, D. C.,
for Director, Office of Workers' Compensation Programs,
United States Department of Labor.

Before: Washington, Chairperson, Hartman and Miller,
Members.

E. R. PASSAMONTI
OCT 28 1975

Washington, Chairperson:

This is an appeal by the employer/carrier from a Decision and Order (75-LHCA-101) of Administrative Law Judge Edwin S. Bernstein, in which the claimant was awarded compensation for temporary total disability, permanent partial disability, interest on accrued payments due, medical expenses and attorney's fees. The claim arises under provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 *et seq.* (hereafter referred to as the Act).

The claimant was injured while loading bags of coffee onto a truck on Pier 20 of Pouch Terminal, Clifton, Staten Island, New York. It was stipulated by the parties that the claimant sustained injuries to his back and left hip, which caused him to be temporarily totally disabled for a period of about seven weeks, and permanently partially disabled thereafter, having sustained 8½% permanent loss of use of the left leg. It was also stipulated that the accident occurred in the course of the claimant's employment and there was timely notice of injury and a timely claim for compensation.

Decision and Order of the Benefits Review Board.

The administrative law judge found the claim to be within the situs jurisdiction of the Act as defined in Section 2(4). 33 U.S.C. § 903(a). There was no question that the employer is an "employer" within the meaning of Section 2(4). 33 U.S.C. § 902(4). The administrative law judge also found that the claimant was engaged in maritime employment at the time of his injury and was therefore an "employee" as defined by Section 2(3) of the Act. 33 U.S.C. § 902(3). Since these three elements of jurisdiction under the Act were satisfied, the claimant was awarded compensation.

In this appeal, the employer/carrier challenge the finding that the claimant was engaged in maritime employment at the time of his injury. They, therefore, contend that jurisdictional requirements of the Act have not been met and this claim is not compensable.

The record indicates, and the administrative law judge found, that the cargo the claimant was loading onto the truck had been unloaded from a ship and placed on the pier about 133 days prior to the date of the claimant's accident. It is contended that the passage of time between removal of the cargo from the ship and placing it on the truck, during which time it rested on the pier, is of such an extent and duration that the unloading process had long ceased and the cargo had been in storage. It is argued that loading this cargo, then, cannot be considered to be maritime employment. We disagree.

In the case of *Avvento v. Hellenic Lines*, 1 BRBS 174, BRB No. 74-153 (Nov. 12, 1974), this Board stated:

. . . [U]ntil cargo is delivered to a trucker or other carrier who is to pick it up for further trans-shipment, such cargo is in maritime commerce and all employees engaged in its movement to that point are engaged in maritime employment.

There is no question that this cargo was held on the pier pending completion of arrangements for its delivery to a

Decision and Order of the Benefits Review Board.

consignee. Removal of cargo from a vessel and placing it temporarily at rest on a pier does not terminate the maritime nature of the cargo. See *Richardson v. Great Lakes Storage and Contracting Co.*, 2 BRBS 31, BRB Nos. 74-212, 2-2A (June 26, 1975). That circumstances necessitated retention of this cargo on a pier for an unusually long period is irrelevant. This Board has also held that loading trucks is a necessary step in the loading and unloading process and employees engaged in that activity are engaged in maritime employment. *Avvento v. Hellenic Lines, supra*; *Di Somma v. John W. McGrath Corp.* 1 BRBS 433, BRB No. 74-199 (April 30, 1975).

The claimant was clearly engaged in maritime employment at the time of his injury and the administrative law judge correctly found his claim to be within the jurisdiction of the Act.

The claimant's attorney has requested approval of a fee for services rendered in successful defense of this appeal. Having submitted to the Board a complete, itemized statement of the extent and character of the necessary legal services rendered, in accordance with the applicable Rules and Regulations, 20 C.F.R. §§ 702.132, 802.203, the claimant's attorney is hereby awarded a fee of \$400 to be paid directly by the employer/carrier in a lump sum. 33 U.S.C. § 928.

The Decision and Order of the administrative law judge is affirmed in all respects.

RUTH V. WASHINGTON

Ruth V. Washington, Chairperson

We Concur:

RALPH M. HARTMAN

Ralph M. Hartman, Member

JULIUS MILLER

Julius Miller, Member

Dated this 9th day of October 1975.

Decision and Order of the Administrative Law Judge.

U. S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Washington, D.C. 20210

Case No. 75-LHCA-101
[Formerly 2-29134]

IN THE MATTER OF
ANTHONY DELLAVENTURA,

Claimant,

vs.

PITTSTON STEVEDORING COMPANY,
HOME INSURANCE COMPANY,

Employer,

Carrier,

Angelo C. Gucciardo, Esquire
Israel, Adler, Ronca & Gucciardo
160 Broadway
New York, New York 10038
For the Claimant

Joseph F. Manes, Esquire
11 Park Place
New York, New York 10007
For the Employer
and Carrier

Before: EDWIN S. BERNSTEIN
ADMINISTRATIVE LAW JUDGE

Decision and Order of the Administrative Law Judge.

DECISION AND ORDER

Pursuant to Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.* ("The Act"), a hearing of the above matter was held before me in New York City, on November 18, 1974. Both parties were represented by counsel and were afforded a full opportunity to adduce evidence, to call, examine and cross-examine witnesses, and to submit briefs and proposed findings. Upon the entire record, my observations of the witnesses and their demeanor, and my study of the applicable law, I make the following findings of fact, conclusions of law, and order.

Findings of Fact

On June 27, 1973, while employed by Pittston Stevedoring Company as a sorter, Claimant was injured. As a sorter which is a subcategory of terminal labor and a type of longshoreman, Claimant helped to load and unload trucks and lighters. At the time of his injury, Claimant was helping to unload coffee beans onto a truck. Claimant slipped on coffee beans and fell, injuring his back and left hip.

The accident occurred on Pier 20 of Pouch Terminal in Clifton, Staten Island, New York. Pier 20 is used to load and unload vessels and contains no warehouse facility. The accident occurred about 30 feet from the water's edge.

Respondent's contend that this claim is not within the Act's jurisdiction arguing that Claimant was not engaged in maritime employment.

The evidence indicates that the cargo that Claimant was loading when he was injured was deposited on the pier about 133 days earlier. It was not being warehoused on the pier since the pier contains no warehouse but appar-

Decision and Order of the Administrative Law Judge.

ently had encountered some unexpected delay in being loaded from further shipment by truck.

The parties stipulated and I find:

1. Claimant's average weekly wage was \$241.77.
2. The accident was in the course of Claimant's employment and there was timely notice and a timely claim.
3. Claimant was temporarily totally disabled from June 28, 1973 to August 19, 1973.
4. Claimant sustained an 8½% permanent loss of use of the left leg.

Conclusions of Law

This claim is within the Act's jurisdiction. The area in which Claimant was injured was a pier adjoining navigable water and thus falls within the definition in Section 3(a).

Furthermore, Claimant was engaged in maritime employment pursuant to Section 2(3). The definition of maritime employment is far from a precise one. Moreover, it must be recognized that the process of loading and unloading vessels has undergone considerable change with the advent of containerization. No longer is all cargo loaded piecemeal. Entire containers are often shifted on and off vessels. This has led to different types of longshore work and new types of longshoring jobs. In this case, Claimant was helping to unload coffee beans onto a truck at the pier. I find that this work was maritime employment.

My decision is consistent with the trend of decisions of the Benefits Review Board and other Administrative Law Judges. In *Adkins v. I.T.O. Corporation of Baltimore*, BRB No. 74-123 (November 29, 1974), the Board held that a forklift operator who was loading stripped cargo into

Decision and Order of the Administrative Law Judge.

trucks for further movement was, "performing the first and last tasks in a series of longshoring operations thereby bringing him within the scope of maritime employment." It also held that, "the fact that cargo does not move directly between the ship and the shed is of no consequence." In *Arvento v. Hellenic Lines, Ltd.*, BRB No. 74-153 (November 12, 1974), the Board found jurisdiction where Claimant was injured inside a truck while taking cases of goods from a forklift and storing them in a truck. In *Copolino v. International Terminal Operating Company, Inc.*, BRB No. 74-136 (December 2, 1974), the Board found that a hiring agent and foreman who was engaged in a clerical function when injured was in maritime employment. In *Lang v. Nacirema Operating Company, Inc.*, 74-LHCA-214 (August 19, 1974), *Stockman v. John T. Clark & Son of Boston, Inc.*, 74-LHCA-219 (November 25, 1974), *Kelley v. Handcor, Inc.*, 74-LHCA-171 (July 22, 1974), and *Gacek v. Western Stevedoring & Terminal Co.*, 74-LHCA-197 (August 19, 1974), members of stuffing gangs, some of whom were working in warehouses, were found to be working in maritime employment as were hi-lo drivers in *Brown v. Maritime Terminals, Inc.*, BRB Nos. 74-177 and 74-177A (December 6, 1974), *DiSomma v. John W. McGrath Corp.*, 74-LHCA-176 (September 19, 1974), and *Mininni v. Pittston Stevedoring Corp.*, 74-LHCA-222 (September 18, 1974) and a pond man who was doing sweeping work in *Gilmore v. Weyerhaeuser Co.*, BRB No. 74-141 (November 12, 1974).

Other types of work that have been held to constitute maritime employment within the Act by Administrative Law Judges include moving steel plates from a truck to a shoreside gear locker from which they would later be moved and welded to ships;¹ driving an automobile around

¹ *Herron v. Brady-Hamilton Stevedore Co.*, 74-LHCA-111 (July 23, 1974).

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an open yard to list containers that would ultimately be loaded aboard ships;² working as a grain elevator keyman;³ checking cargo;⁴ working as a tipper switchman unloading grain from a railroad car;⁵ working as millwrights whose responsibilities were to insure that equipment such as conveyor belts and grain elevators were maintained, repaired, and properly rigged;⁶ "stuffing" (loading) logs into a trailer;⁷ working as a sweeper to keep the waterfront area, yard and warehouse free of debris;⁸ unloading rolls of paper from a freight car after which the paper was to be taken by hi-lo to a shed located on the pier;⁹ transporting cargo by hustler vehicle from a point near the ship where they had been deposited to a storage area near the terminal and vice versa;¹⁰ removing barrel drums from a container to pallets in a warehouse building;¹¹ and working as a watchman aboard a vessel.¹²

² *Muldowney v. Lavino Shipping Co.*, 74-LHCA-30 (July 11, 1974).

³ *Mildenberger v. Cargill, Inc.*, 74-LHCA-270 (Nov. 11, 1974).

⁴ *Martin v. Marine Terminals Corp.*, 74-LHCA-204 (Aug. 23, 1974).

⁵ *Powell v. Cargill, Inc.*, 74-LHCA-172 (Oct. 8, 1974).

⁶ *Palmer v. Kerr Grain Corp.*, 74-LHCA-208 (July 18, 1974) and *Crampton v. Cargill, Inc.*, 74-LHCA-215 (July 31, 1974).

⁷ *Bailey v. Nacirema Operating Co., Inc.*, 74-LHCA-117 (July 29, 1974).

⁸ *Palumbo v. International Terminal Operating Co.*, 74-LHCA-224 (Nov. 7, 1974).

⁹ *Scalmato v. Northeast Marine Terminal Co.*, 74-LHCA-203 (Sept. 24, 1974).

¹⁰ *Harris v. Maritime Terminals, Inc.*, 74-LHCA-108 (Aug. 15, 1974).

¹¹ *Lopez v. Atlantic Container Line, Ltd.*, 74-LHCA-257 (Dec. 31, 1974).

¹² *McGrath v. E. J. Ring Detective Agency, Inc.*, 74-LHCA-245 (Oct. 4, 1974).

Decision and Order of the Administrative Law Judge.

The pre-1972 amendments case of *Litwinowicz v. Weyerhaeuser Steamship Co.*, 179 F. Supp. 812 (E.D. Pa. 1959) contains helpful language. In that case, plaintiff was injured while working in a railroad car while placing chocks under a draft of steel beams preparatory to their being hoisted aboard a ship. Rejecting the defendant's claim, the court held:

The term loading is not a word of art, and is not to be narrowly and hyper-technically interpreted. Plaintiffs' acts at the time of the accident were direct, necessary steps in the physical transfer of the steel from the railroad car into the vessel which constitutes the work of loading.

The fact that the cargo on which Claimant was working may have remained at the pier for 133 days before it was discharged to the consignee does not defeat this claim. The cargo was on the pier awaiting further shipment and as such was in the course of maritime commerce. There are no warehouse facilities at Pier 20. The employer is not in the business of storing cargo. Its business is to load and unload cargo to and from ships. There was no intent to store the cargo on the pier but merely to keep the cargo on the pier until the goods were ready for release to the consignee. The detention of that cargo on the pier in preparation for its release does not remove the goods from maritime commerce. In *Arvento v. Hellenic Lines, Ltd.*, BRB No. 74-153 (Nov. 12, 1974), the Benefits Review Board found that goods were in maritime commerce and Claimant was in maritime employment even though the goods had been at rest on the pier for four days. To the same effect, in *Stockman v. John T. Clark & Son of Boston, Inc.*, 74-LHCA-219 (Nov. 25, 1974), Judge Oliver found jurisdiction under the Act although the goods that Claimant was working on had been unloaded from a vessel three days

Decision and Order of the Administrative Law Judge.

earlier. In *Lang v. Nacirema Operating Co., Inc.*, 74-LHCA-214 (Aug. 19, 1974) Judge Capps stated, "The fact that Claimant was loading a container for eventual loading onto a vessel rather than actually loading a vessel at the time of his injury is not sufficient to remove him from the protection of the Act." In *Coppolino v. International Terminal Operating Co., Inc.*, 74-LHCA-50 (May 10, 1974), affirmed BRB No. 74-136 (Dec. 2, 1974), Judge Benn held that the argument that there was no vessel docked at the pier when the employee was injured was of little consequence. In *Bailey v. Nacirema Operating Co., Inc.*, 74-LHCA-117 (July 29, 1974) Judge Howder similarly disposed of an argument that the claim must fail because the cargo on which the employee was working when injured was not placed on board a ship until over 2 weeks later. In essence what must be looked at is not the time but the reason that led to the cargo remaining on the pier. In the case at hand as in those cited the cargo was merely awaiting a further step in the overall process of maritime commerce and thus the claim is within the jurisdiction of the Act.

Claimant is therefore entitled to receive from Respondents:

1. Compensation for temporary, total disability from June 28, 1973 to and including August 19, 1973 at the rate of \$161.18 per week.
2. Compensation for an 8½ percent permanent loss of use of the left leg, totalling \$3,945.69 (24.48 weeks at \$161.18 per week).
3. Interest of six percent per annum from the date that each payment was due until paid.
4. Payment of all of Claimant's reasonable medical expenses resulting from the disabling injury, pursuant to Section 7 of the Act.

Decision and Order of the Administrative Law Judge.

Angelo C. Gucciardo, Esq. is entitled to receive from Respondents the sum of \$1300.00 which I find to be the reasonable value of legal services that he rendered to Claimant herein and the sum of \$73.70 as reimbursement for expenses incurred, pursuant to Section 28(a) of the Act.

ORDER

The Employer, Pittston Stevedoring Corporation and the Carrier, Home Insurance Company shall pay:

1. To Claimant, Anthony Dellaventura compensation for temporary, total disability from June 28, 1973 to and including August 19, 1973 at the rate of \$161.18 per week plus \$3945.69 for an 8½ percent permanent loss of use of the left leg, with interest at six percent per annum from the date that each payment was due until paid.

2. All of Claimant's reasonable medical expenses resulting from the disabling injury.

3. To Angelo C. Gucciardo, Esq. the sum of \$1373.70 for legal services rendered to Claimant and expenses incurred in this matter.

EDWIN S. BERNSTEIN
Edwin S. Bernstein
Administrative Law Judge

Dated: January 31, 1975
Washington, D.C.

**Transcript of Proceedings Before the Administrative
Law Judge.**

U. S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

[S A M E T I T L E]

Room 208, The Tax Court
Federal Building,
26 Federal Plaza,
New York, New York
Monday, November 18, 1974

The hearing in the above-entitled matter was convened
at 11:00 o'clock, a.m., before Edwin S. Bernstein, Ad-
ministrative Law Judge.

APPEARANCES:

On behalf of the Claimant:

ANGELO C. GUCCIARDO, Esq.,
(Israel, Adler, Ronca & Gucciardo),
160 Broadway,
New York, New York

On behalf of the Employer/Carrier:

JOSEPH S. MANES, Esq.,
11 Park Place,
New York New York

Colloquy.

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Anthony Dellaventura,

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Re-cross	55a

Joseph Atanasio,

Direct	61a
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EXHIBITS

<i>Respondent's Exhibit Nos.</i>		<i>Identification</i>	<i>Received</i>
1	Schematic of site of accident	21a	21a
2	Report and Manifest	36a	37a
3	Stowage list	38a	42a
4-A thru G	Timekeeper's Activity Report	39a	42a
5	Delivery order dated June 22, 1973	40a	42a
6	Gate Pass	42a	42a
7	Tally of Merchandise deliv- ered	43a	43a
7-A	Reverse side of Respondent's Exhibit No. 7	43a	43a
8	Manifest	54a	56a

Colloquy.

PROCEEDINGS

Judge Bernstein: This is the formal hearing in Case Number 75-LHCA-101, formerly Case Number 2-29134.

This is a proceeding pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act. The Claimant is Anthony Dellaventura, and the Employer is Pittston Stevedoring Company, and the Carrier is Home Insurance Company.

Sometimes during the course of this proceeding the Employer and Carrier may be referred to as Respondent.

I am Edwin S. Bernstein, the presiding Administrative Law Judge.

Will counsel for the Claimant note his appearance, please?

Mr. Gucciardo: I am Angelo Gucciardo of the firm of Israel, Adler, Ronca & Gucciardo, 160 Broadway, New York, New York, 10038.

Judge Bernstein: And for the Respondent?

Mr. Manes: Joseph S. Manes, 11 Park Place, New York City, New York.

Judge Bernstein: Mr. Gucciardo, can you give me a statement, a brief statement, as to what this case is about?

Mr. Gucciardo: Yes, sir.

My client, Anthony Dellaventura, is employed as a longshoreman, and in that capacity sometimes works on vessels, and sometimes works on the pier for various stevedoring companies, including Pittston Stevedoring Corporation, the Respondent in this case.

As a pier worker he can be called upon to load and unload trucks that deliver cargo to be put onboard a vessel, or load a truck with cargo that has been unloaded from a vessel, and that on the day of the accident, June 27, 1973, he was employed by Pittston Stevedoring Corporation as a terminal laborer, or also known as extra labor.

Colloquy.

While engaging in loading coffee into a truck from the pier, he slipped on coffee beans in the truck, and fell, injuring his back and left hip, and that he sustained a period of temporary disability from the date of the accident until August 20th, 1973; and that this claim comes within the provisions of the amended Longshoremen's and Harbor Workers' Compensation Act.

Judge Bernstein: Thank you, Mr. Gucciardo.

Mr. Manes, what is the basis of your client's opposition?

Mr. Manes: Your Honor, we contest the jurisdiction assumed by the Department of Labor, or I should properly say the Bureau of Workmen's Compensation.

The facts are that—

Judge Bernstein: Excuse me. That reminds me, I note that an appearance has been entered by the Solicitor, the Department of Labor, in this case. Therefore, after I have received the opening statements we will adjourn the hearing until two p.m. this afternoon to enable the Solicitor to participate.

I have received the notice indicating that they plan to appear.

Mr. Gucciardo: If you want to, all is well and good. They have not appeared on the jurisdictional question since I have been trying them, and if you want to proceed because they have an objection and we are going to save time by going ahead, I assure you.

Judge Bernstein: I appreciate the position, but I think under the circumstances we cannot proceed with evidence until after two o'clock.

I would like Mr. Manes to complete his opening statement, and we will recess the hearing.

Mr. Manes: Your Honor, our position simply is this. This man unquestionably was injured while loading bags of coffee onto a truck owned by an outfit called ERA Trucking Company.

Colloquy.

However, we contend that such accident was not within the purview of maritime employment for the one simple fact that we will demonstrate by documentary evidence that this cargo had in fact been discharged at Pier 20 in Staten Island on the dates of February 15, 13 and 16 of 1973. The accident claimed is June 27, 1973.

And that we will demonstrate it was the failure of the trucking company to pick up the cargo at an earlier date. It was available for transshipment, indeed, on the day in which it was unloaded. And that since it had been at least, for a period of approximately 133 days we contend no jurisdiction within the meaning of the Act.

Judge Bernstein: All right.

Mr. Manes: Your Honor, on the issue of the Solicitor appearing, by what right does the Solicitor have for an individual available to appear in the proceedings?

Judge Bernstein: The regulations of the Department of Labor with respect to this Act.

Mr. Manes: What function does he serve in an adversary proceeding such as this?

Judge Bernstein: That is a question that has been raised before.

Mr. Manes: The reason I asked is that I had not seen any adjudication by the Benefits Review Board.

Judge Bernstein: I do not know that it has been before the Benefits Review Board. I do not know that anyone has challenged the Solicitor to appear in these cases. He has appeared both before Administrative Law Judges.

In the course of hearing cases under the Longshore Act the Solicitor also has appeared before the Benefits Review Board.

The Solicitor has at times appealed from decisions of the Administrative Law Judges, and those appeals have been considered by the Benefits Review Board, and in some cases those appeals have been granted by the Board, even

Colloquy.

though in some of those cases both counsel have been agreeable to the decision of the Administrative Law Judge.

Mr. Manes: I will consider that, Your Honor, in another case of these proceedings.

Judge Bernstein: I was looking for another section that I cannot find. I will point it out when I find it.

Mr. Manes: Under those circumstances I assume the hearing is adjourned until two p.m.

Judge Bernstein: Yes.

Mr. Gucciardo: I do not know if counsel is objecting to the Solicitor or not, and I would like the record to be clear if he is objecting or not objecting.

Mr. Manes: Since the Solicitor is not here to defend himself, I will not object until he appears.

Judge Bernstein: Section 702.333 of the regulations for this Act, which were promulgated as Subsection (a) of 20, Federal Regulations, Chapter 6, and which appeared at Volume 38, Number 186 of the Federal Register dated September 26, 1973, and Subsection (b) of that decision reads that the Solicitor of Labor or his designee may appear and participate in any formal hearing held pursuant to the regulations on behalf of the Director as an interested party.

Is there anything further, gentlemen?

Mr. Manes: No, Your Honor. Thank you.

Judge Bernstein: The hearing is adjourned until two p.m.

(Whereupon, at 11.20 o'clock, p.m., the hearing in the above-entitled matter was recessed, to reconvene at 2:00 o'clock, p.m., the same day.)

AFTERNOON SESSION

(2:00 p.m.)

Judge Bernstein: We will proceed.

Colloquy.

Mr. Gucciardo: Judge, I called the Solicitor, and they will submit a brief, and they said that they would not appear.

Judge Bernstein: Mr. Gucciardo, would you like to call your first witness?

Mr. Gucciardo: We have not entered into any stipulations, and there is a chance we might, Your Honor.

He has been busy with his witnesses, and so have I.

Judge Bernstein: We will recess for ten minutes, and see if you can get together on that.

(Short recess.)

Judge Bernstein: The hearing is resumed, gentlemen. Do you have a stipulation for the record?

Mr. Gucciardo: Yes, Your Honor.

We will stipulate to the following facts: that the accident occurred on June 27, 1973, that timely notice of the injury was given to the Employer, that the accident occurred during the course of employment. And that the Claimant was employed by the Pittston Stevedoring Company as a terminal labor employee. And the period of temporary-total disability was June 28th until and including August 19, 1973. And that the average weekly wage was \$241.77 per week, and that the rate of compensation is \$167.05 per week. And that at the time of the accident the Claimant was engaged in loading a truck with coffee, and the truckman had been sent by the consignee to pick up coffee, but it was maintained by the Respondent herein for the purposes of loading and unloading vessels, namely, Pier 20, Your Honor, Staten Island, which is adjacent to navigable waters of the United States.

And that in the event you find in favor of the Claimant he is entitled to the period of temporary-total disability mentioned above, and eight and one-half percent permanent partial disability of the left leg.

The Carrier has a schematic which it is introducing as

Colloquy.

its exhibit, Respondent's Exhibit Number 1, and we agree that that schematic reasonably represents the area involved as the site of the accident.

Did I leave anything out?

Mr. Manes: No.

Mr. Gucciardo: Do you agree to what I said?

Mr. Manes: Yes.

Judge Bernstein: May I see Respondent's Exhibit 1, please?

Mr. Gucciardo: For the record, it is labeled Pouch Terminal Incorporated, and that is not to say it is the same employer herein.

The schematic represents the area, and Pouch Terminal Incorporated.

Judge Bernstein: I see. And was the truck on which the Claimant was working being loaded actually on Pier 20 as it is shown in the schematic?

Mr. Manes: Correct.

Judge Bernstein: The document is admitted as Respondent's Exhibit 1.

(The document referred to, schematic of the site of accident, was marked for identification as Respondent's Exhibit No. 1 and received in evidence.)

Judge Bernstein: Any further stipulations?

Mr. Manes: No others.

Judge Bernstein: What witnesses?

Mr. Gucciardo: The Claimant and an expert witness. However, if counsel will agree, I will withhold my expert witness and save it for rebuttal, since I do not think there is going to be a dispute as to the facts.

I do not want to belabor the point. The expert witness was not present.

Judge Bernstein: We all want to save time and expedite the proceedings.

Anthony Dellaventura—Direct.

Mr. Manes: I have no objection to that.

I have one witness to testify concerning documentary evidence that we have to produce, as well as a clarification of the schematic, Respondent's Exhibit 1.

Judge Bernstein: Fine. Please call your first witness.

Mr. Gucciardo: I call the Claimant, Mr. Dellaventura, please.

Whereupon, ANTHONY DELLAVENTURA was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gucciardo:

Q. Mr. Dellaventura, will you please give us your name and address for the record? A. Anthony Dellaventura, 4 Sumner Avenue, Staten Island.

Q. What is your occupation, sir? A. Longshoreman.

Q. How long have you been so employed? A. Twenty-eight or 29 years.

Q. As a longshoreman, will you tell us what activities you engage in? A. Load and unload ships, loading and unloading trucks, and so forth.

Q. As a longshoreman do you also work under the subcategory of sorter? A. Yes, sir.

Q. And under the subcategory of terminal labor? A. Yes, sir.

Q. Will you tell us what the duties of a terminal labor man is? A. Well, terminal labor, you load the trucks, unload them, load lighters, unload them, and the ships, too, as a sorter.

Q. Now, let me interrupt you. I just want the terminal labor. A. Loading and unloading trucks and lighters.

Q. Is it the obligation for terminal labor to have anything to do with ship stores? A. Yes.

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Q. How is that done when it is done? A. Ship stores, unload the truck, and we have to carry the stuff up the stairway, or take it off the string piece. Pick it up with the crane, and they put it on the dock, on the ship, and we in turn bring it to the storeroom.

Q. You mentioned the word stairway. A. The gangway.

Q. There is no such thing as a stairway? A. No, gangway.

Q. And as a sorter, what do you do? A. Go down to the hold and sort out the cargo. You tell the holdman what to put on the pallet, and they in turn send it out.

Q. Do you mean the hold of a vessel? A. The hold of a vessel.

Q. And you mentioned the word lighter before. A. Yes.

Q. Is it a lighter or barge, or is there any distinction between the two? A. Both on the same principle, the lighter and the barge.

Q. Are these two vessels vessels that are afloat and tie up at Pier 20 at Staten Island? A. Yes.

Q. And the difference between that and the ship is that the barge has no motor? A. That's right.

Q. At the time of this accident, which was June 27, 1973, were you regularly employed by the Pittston Stevedoring Company? A. Yes.

Q. What was your job with them? A. I was extra labor man.

Q. Was this the only job classification that you had, sir? A. And also a sorter for them.

Q. Did you work in both capacities for the Pittston Stevedoring Company? A. Yes.

Q. Now, at the time of this injury, and I believe you were loading coffee bags onto a flatbed truck, is that not correct? A. Yes.

Q. Will you tell us generally what the procedure is in discharging a vessel of coffee, and I want you to start from

Anthony Dellaventura—Direct.

the hold of the ship, and tell us what these bags go through, until it is delivered to the truck.

Mr. Manes: Your Honor, I have to object to that question as to relevancy. I think the stipulation indicated that this man was working on a flatbed trailer at the time of his injury.

There was no claim, to my knowledge, that in fact he was assisting in the discharge of cargo on the day in question, June 27, 1973.

Judge Bernstein: Aren't you conceding that this man was not engaged in maritime employment?

Mr. Manes: Yes, sir, at the time of the accident.

Mr. Gucciardo: I am trying to brief the entire loading operations, and this is material.

Judge Bernstein: I will permit the line of questioning.

The Witness: Well, when the ship comes in they tie it up, open up the hatch to sort, and see how the coffee is laid out, and we in turn tell the man what to put on a pallet, certain marks, and they take it out of the hold and it goes onto the pier, and is stowed, and then some time later the trucks come in, and after the ship is finished we have to load the trucks.

By Mr. Gucciardo:

Q. Just for clarification, you said you go down into the hold of a vessel. A. Yes.

Q. And the coffee bag is taken out by drafts? A. Usually palletized.

Q. Each pallet is a draft? A. Yes, it consists of a draft, yes.

Q. And the coffee is marked with certain marks on the bag? A. Yes.

Q. And you identify the markings, and order a discharge onto the pier? A. Onto the pier.

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Q. Put on the pallet in the hold? A. Put on a pallet, and the deckman takes it out, and they put it on the dock, and the driver puts it away.

Q. A step at a time?

You work as a sorter in the hold of the vessel? A. Yes.

Q. And at the time you are sorting this cargo out, are you employed by Pittston? A. Yes.

Q. And the winchmen, deckmen, holdmen are also employed by Pittston Stevedoring? A. Yes.

Q. And it is landed on the string piece? A. Yes.

Q. What happens to that draft after that? A. The machinemen come in, take it and put it where it is designated on the pier.

Q. The hi-lo? A. The hi-lo.

Q. By means of a forklift, and take it to a certain section of the pier? A. Yes.

Q. And then you say the truck comes and picks it up? How is this truckman notified, and who does he work for when the truckman arrives to pick up the cargo? A. That is all done in the office.

Q. Well, does the truckman work for Pittston Stevedoring Company? A. Not that I know.

Q. Do you know what a consignee is? A. The person that buys the coffee, the owner of the coffee.

Q. Who arranges to send the truckman down? A. Through the Pittston Stevedoring Company.

Q. Does the consignee make the arrangements, as far as you know, to send the truckman down to pick up the stuff?

A. That I don't know.

Q. All right.

The truckman comes down to pick up the coffee, is that right? A. Yes.

Q. Does he enter the pier terminal proper in order to do it? A. He has to go through the gate.

Q. Is that maintained by the Pittston Stevedoring Company? A. Yes.

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Q. Somebody employed by the Pittston Stevedoring Company? A. Yes, sir.

Q. And after he enters the gate, is he on the pier property maintained by Pittston Stevedoring Company at Pier Number 20 in Staten Island? A. Yes.

Q. Is the truck physically located on the pier? A. Yes.

Q. And who does the loading of that truck with the coffee beans? A. The longshoremen, the extra labor man, and the truck-driver.

Q. You said the longshoremen, extra labor man, is that a subcategory under longshoremen generally? A. That's one of the qualifications of a longshoreman.

Q. In other words, whether he be terminal labor, or a sorter, or a holdman, or a deckman, or winchman, is the classification known as a longshoreman? A. That's right.

Q. Now, after the coffee is put on the pier, and you said before a truckman arrives to pick it up, and how long a time does it usually take them, between the time it is landed on the pier, and the truckman picks it up? A. I say about ten days, usually.

Q. Do you know what the word demurrage means? A. Demurrage, yes.

Q. What does it mean? A. It means if they leave it on there too long, they have to pay extra fees when they do pick it up.

Q. You know why they have to pay these extra fees for leaving the cargo on the pier too long? A. I don't know.

Q. You don't know? A. No.

Q. Well, what would happen to the pier if suddenly a bunch of consignees did not pick up their merchandise and left it there? A. They would tie up the pier.

Q. And do the extra charges have anything to do with attempting to free the pier for the purpose for which it was intended? A. I don't know.

Q. Does it sometimes happen that cargo that is received

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from overseas, such as coffee bags, remain on the pier for a longer period of time than ten days or two weeks, or even a month? A. Sometimes, yes.

Q. Do you know what reasons could cause this type of delay? A. I don't know.

Q. Is there a warehousing facility maintained by the Pouch Terminal Incorporated located just outside of the pier, at Pier 20th Street, Staten Island? A. Yes.

Q. Do you know what that warehousing facility does? A. Well, they take the stuff off the pier sometimes, and they put it into their warehouse for the owners to come and pick up.

Q. Does it sometimes occur that coffee beans are stowed in this warehouse? A. Yes.

Q. And where the coffee beans are stowed at the Pouch Terminal, how is it physically transferred from the pier to the Pouch Terminal? A. A hi-lo with the forklift, and he puts it at the head of the pier, and Pouch Terminal takes it from there and puts it into their warehouse.

Justice Bernstein: What pier?

The Witness: Pier 20, or the pier I was working. The hi-lo takes it out to the head of the pier outside, and then their Pouch warehousemen, they have machines also, and they take it and put it into the warehouse.

By Mr. Gucciardo:

Q. The employee that takes it from the pier to the head of the pier is employed by who? A. Pittston.

Q. Does the Pouch Terminal Company have the right to bring their hi-lo's directly into the pier and pick it up from where it is resting, and take it from the warehouse directly? A. No.

Anthony Dellaventura—Direct.

Q. Does it sometimes happen that cargo that is off-loaded from the vessel at 20th Street, Staten Island, is warehoused? A. Oh, sure.

Q. Does Pittston Stevedoring Company, as far as you know, have any warehousing facilities on their pier? A. Not that I know of.

Q. And when it does have to be warehoused, where can it go, let's put it that way? A. Into their Pouch Terminal warehouse.

Q. Or perhaps some other warehouse? A. They have to go to the Pouch. I wouldn't know.

Q. Then when cargo does arrive at Pier 20th Street, it has to be done by the Pouch Terminal? A. Yes.

Q. And does the Pouch Terminal have their own warehousemen working for them? A. Yes.

Q. They do not employ the same longshoremen who work for Pittston? A. No.

Q. When cargo arrives, such as coffee beans, and is discharged on the pier, and there is a shortage of the amount that was due to be shipped, or there is damaged cargo, or it does not clear through Customs, does that cause a delay of that merchandise from being processed on the pier? A. Yes.

Q. And can cargo also be delayed on the pier because it has not passed the Department of Agriculture's requirements? A. Yes.

Q. Requirements, that is. A. Yes.

Q. And is sometimes cargo delayed on the pier because there is a claim made against the shipping company for damage? A. Yes.

Q. So there are many, many reasons why cargo could be delayed in the further transshipment to the consignees? A. Yes.

Q. Is this the usual procedure, or the unusual procedure, that you have cargo remain on the pier longer than free time allowed? A. It is not the usual procedure.

Anthony Dellaventura—Direct.

Q. What is free time allowed? A. I'm pretty sure it is about ten days.

Q. Does that mean if they pick it up within ten days or two weeks there is no charge? A. That's right.

Q. I show you Respondent's Exhibit 1.

I am going to ask you with this ballpoint to look at the exhibit and put with an X where the truck was located on the pier at the time of your accident. A. Here (indicating).

Q. There is a gray area on Pier 20th Street, is that right? A. Yes.

Q. Is the gray area a building? A. Yes.

Q. And there is a roof over it? A. Yes.

Q. And from the edge of the gray area there is a line to the edge of the pier— A. The string piece.

Q. And was the truck on the string piece, or within the building area when it was loaded? A. Within the building area.

Q. And is the purpose of the building with the roof over it to protect the cargo from rain and other elements? A. Yes.

Q. How far from the water's edge is the X that you marked on Respondent's Exhibit 1 to the water's edge in feet, sir? A. About 30 foot.

Q. About 30 feet? A. Yes.

Q. How many ships can this pier accommodate at one time? A. About four.

Q. How long have you worked for Pittston Stevedoring Company? A. I don't know. Maybe about five or six years, I guess.

Q. In that period of time did you become familiar with dock receipts, bills of lading, and other documents that are used in shipping? A. Yes.

Q. Do you, as a sorter, sometimes have to refer to these documents in order to sort out the merchandise properly? A. No. No.

Anthony Dellaventura—Cross.

Q. Have you ever heard of the ship Campeche? A. Yes.

Q. Is that a ship that did run a regular run from Pier 20 in Staten Island, from Staten Island to Mexico? A. Yes.

Q. How often did it come in? A. Once a month, roughly.

Q. Did it carry a lot of coffee? A. Quite a bit.

Q. Was it a coffee run more or less? A. Yes, yes.

Q. Is it unusual for coffee bags, or coffee cargo to remain at Pier Number 20 in Staten Island for 100 to 130 days? A. That is unusual, yes.

Q. When cargo remains on the pier for that length of time does it mean that something has gone wrong somewhere along the line?

Mr. Manes: Your Honor, may I object to the line of questioning? It is repetitious.

Mr. Gucciardo: I withdraw the question. Your witness.

Cross Examination by Mr. Manes:

Q. Mr. Dellaventura, on June 27, 1973, you started work about eight o'clock, is that right? A. Yes.

Q. And you were assisting with a partner, the truck-driver, in lifting bags of coffee from the pallet to the body of the truck? A. Yes.

Q. And you were actually in the body of the truck when you got hurt? A. Yes.

Q. Now, all the testimony that you gave about going into the hold, operating as a sorter, that was not done on this day, was it? A. No.

Q. You were not in the hold of any ship, is that correct? A. Not that day, no.

Q. The testimony you gave about the opening of the hatch, the winchmen, and their duties, that was not part of the job that day, was it? A. Not that day, no.

Anthony Dellaventura—Cross.

Q. So you were just testifying generally as to the duties of these people at various times, is that right? A. Yes.

Q. Now, you said you were not familiar with the term demurrage—

Mr. Gucciardo: Objection. He said he was.

The Witness: I am familiar with it.

By Mr. Manes:

Q. You don't know anything about demurrage on this particular cargo, do you? A. No.

Q. Do you dispute the fact that this coffee was loaded on the pier beginning of February of 1973? A. I don't know that.

Q. You don't know? A. No.

Q. Had you ever participated in the unloading of coffee from a ship? A. Yes.

Q. How long prior to June 27, 1973, had you participated in the unloading of coffee?

Mr. Gucciardo: If you can recall.

The Witness: Frequently.

By Mr. Manes:

Q. How long in days, weeks, months? A. I don't understand the question.

Q. You were loading coffee bags into a flatbed trailer on June 27th? A. Yes.

Q. How many days had you been doing that kind of work? A. I have been doing it quite a while.

Q. Did you do it on June 26th? A. Yes.

Q. And June 24th? A. I don't recall.

Q. Well, when before June 24th had you last engaged in the loading or unloading of coffee? A. I don't recall.

Anthony Dellaventura—Cross.

Q. Did you ever take cargo from a pier to the Pouch Terminal warehouse yourself? A. No.

Q. Did you ever see anybody employed by Pittston do that? A. I have seen them take it to the end of the pier.

Q. The end of the pier? A. Yes.

Q. And where it goes from the end of the pier you do not know? A. I have seen Pouch Terminal take it away.

Q. How long before June 27th did you see that? A. I have seen it many times.

Q. How many days, for instance, prior to June 27th had you last seen it? A. I don't remember.

Q. The coffee in this case was picked up by a trucker known as ERA Trucking Company, is that right? A. I don't remember that, either.

Q. Did you finish the unloading of the coffee into the flatbed trailer before you got hurt? A. No.

Q. How many bags were left to be loaded? A. Well, I finished it after I got hurt, too, but I didn't—your question was—you said did I finish before I got hurt, and I didn't finish before I got hurt.

Q. Did you complete the loading operation that day? A. Yes.

Q. You stopped work at about what time? A. For my day you are talking about?

Q. On that day, June 27th. A. I finished at five o'clock.

Q. The whole day you worked? A. Yes.

Q. And what time did you say you got hurt? A. Eight-thirty in the morning.

Q. How many bags were loaded on that day, do you know? A. About 150 or 200.

Q. Did any coffee cargo remain on the pier after that loading? A. Yes.

Q. You did not continue working the next day, I take it? A. No.

Q. You are a member of the International Longshoremen's Association? A. Yes.

Anthony Dellaventura—Redirect.

Q. And the International Longshoremen's Association has as its membership people terminated only longshoremen, is that correct? A. Yes.

Q. The type of work they do does not control the designation of longshoreman, is that correct? A hi-lo driver can be a longshoreman, is that correct? A. Yes.

Q. And an extra labor man? A. Yes.

Q. And all under the generic term of longshoreman? A. Yes.

Q. Have you ever injured your left leg before? A. No.

Mr. Manes: I have no other questions of this witness, Your Honor.

Redirect Examination by Mr. Gucciardo:

Q. When you got hurt did you report the accident to the timekeeper? A. Yes.

Q. Did the timekeeper then come out and look at the bags you were handling on this particular truck? A. No.

Q. Did anybody identify the bags you were handling on this particular truck that was in authority? A. Not that I know of.

Q. Such as the pier superintendent? A. Not that I know of.

Q. Is the pier superintendent sitting in the room? A. Yes.

Q. What is his name? A. Mr. Minucci.

Q. Was he present at the time of this accident? A. I don't recall if he was or not.

Q. Did you see him at any time during the day? A. No.

Q. I am not talking about the day of the injury now. A. No. No.

Q. And he did not come over and ask you to identify the bags or the truck that you were working on? A. No.

Salvatore Minucci—Direct.

Q. When you are terminal labor, and you have to load a truck, and that truck is finished, would they be assigned to work on a lighter? A. Yes.

Q. And would you also be assigned by Pittston Stevedoring Company to work on the vessel as a sorter? A. Oh, sure.

Q. Actually this longshore work is what is known as shape work, is that right? You work whenever work is available, is that right? A. Yes.

Q. So that one day you may be working on the pier, and the next day a ship, and the next day a lighter? A. Yes.

Q. So if you do not remember when you worked, or where you worked, you would have no reason to keep records for this, would you? A. No, I don't keep records.

Mr. Gucciardo: Thank you.

Mr. Manes: Nothing else.

Judge Bernstein: I have no questions of the witness at this time.

I understand, Mr. Gucciardo, you have no further witnesses at this time.

Mr. Gucciardo: Correct, Your Honor.

Judge Bernstein: Mr. Manes?

Whereupon, SALVATORE MINUCCI was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Manes:

Q. Will you tell the reporter your full name? A. Salvatore Minucci.

Q. What is your address? A. 146 Rariton Avenue, Staten Island.

Salvatore Minucci—Direct.

Q. Mr. Minucci, on June 27, 1973, by whom were you employed? A. Pittston Stevedoring.

Q. What capacity? A. Terminal manager.

Q. How long prior to June 27th have you had that particular job? A. Three years.

Q. Had you worked for Pittston before that three-year period also? A. No, sir.

Q. Who had you worked for previously? A. Universal Stevedoring.

Q. How long were you employed by them? A. Fifteen years.

Q. In what capacity? A. Head foreman.

Q. You are familiar with loading and unloading ships? A. Yes, I am.

Q. How long have you been on the waterfront? A. Thirty-seven years.

Q. I show you Respondent's Exhibit 1, Mr. Minucci, and I ask you if the area on that document—look at the numbers in the various squares, and what do those numbers represent? A. Warehouses.

Q. Does Pittston own those warehouses? A. No, they do not.

Q. They are owned by whom? A. Pouch Terminal.

Q. Does Pittston store cargo in Pouch Terminal warehouses? A. No.

Mr. Manes: Just for the simplification of the record, I am going to give Mr. Minucci a series of exhibits for identification only, and then I will take them one by one.

Judge Bernstein: Fine.

By Mr. Manes:

Q. Will you show me which is the ship's manifest in those exhibits I have handed you? A. That is the ship's manifest.

Salvatore Minucci—Direct.

Mr. Gucciardo: Your Honor, may we have a voir dire on this point?

Judge Bernstein: Yes.

Voir Dire Examination by Mr. Gucciardo:

Q. Mr. Minucci—

Judge Bernstein: Let's mark it first.

Mr. Gucciardo: That is what I am going to object to. We must have it marked.

(The document referred to, Report and Manifest, was marked for identification as Respondent's Exhibit No. 2.)

By Mr. Gucciardo:

Q. Mr. Minucci, you were not present at the time of the accident, were you? A. I was not in the vicinity of the accident, but I was in the terminal.

Q. Yes, and you did not see what coffee bags the Claimant was handling at the time of this accident, did you? A. No.

Q. And did the Claimant identify the coffee bags that he was handling to you at the time of this accident? A. No, he did not.

Q. Do you have any way of tying up Respondent's Exhibit 2 for identification to the actual cargo in question at the time of the accident? A. What is Exhibit 2?

Q. What you are looking at, sir. A. No, no way.

Mr. Gucciardo: I object to any reference to this document, Your Honor.

Judge Bernstein: Mr. Manes?

Salvatore Minucci—Direct.

Mr. Manes: All right, Your Honor, I will excuse Mr. Minucci for the moment, and call Mr. Chiarello, who can testify that the documents are photostats of true copies of records kept in the course of business, and we can then go through each of the documents in turn.

Mr. Gucciardo: There is no identity of the cargo in question with the documents being presented.

Judge Bernstein: Your objection is to relevance, and not to authenticity?

Mr. Gucciardo: Yes, sir, I have no doubt that they are kept in the regular course of business.

Mr. Manes: Chiarello can testify that these documents represent the documentary evidence of the coffee bags unloaded from the Campeche that day.

Judge Bernstein: I am going to admit this exhibit, and if it is proven to be irrelevant, so be it.

Mr. Manes: Then I will continue with Mr. Minucci.

(The document referred to, Report and Manifest, heretofore marked for identification as Respondent's Exhibit No. 2 was received in evidence.)

Direct Examination (Resumed) by Mr. Manes:

Q. Mr. Minucci, that is a ship's manifest before you?
A. Yes.

Q. And what does that manifest indicate? A. It indicates the name of the ship, the port of loading, and the port of discharge, bill of lading, consignees, and the amount of packages against each bill of lading and the weights.

Q. And the ship on that day was the Campeche? A. Yes, sir.

Q. Who was the consignee? A. It looks like J. O. E. R.

Salvatore Minucci—Direct.

Notify Cofino, Inc. It looks like 72 Water Street, New York.

Mr. Gucciardo: Will the witness point to where he is reading?

The Witness: (Indicating).

By Mr. Manes:

Q. Does it indicate the nature of the cargo? A. Yes, correct, coffee.

Q. Thank you.

Now, from those other exhibits that I have given you, Mr. Minnucci, could you pick out the stowage list, if any?

A. Yes.

Mr. Manes: Your Honor, could that be marked Respondent's Exhibit 3 for identification?

Judge Bernstein: Yes.

Mr. Gucciardo: I have the same objection, Your Honor, no identity of this with the bags involved in this accident.

Judge Bernstein: Your objection is noted.

(The document referred to, stowage list, marked for identification as Respondent's Exhibit No. 3.)

By Mr. Manes:

Q. What does that document signify? A. It is a stowage list. A stowage list.

Q. What does it tell anybody? A. I am sorry, but this is not the stowage list. This looks more like the gate list.

Judge Bernstein: Can you find the stowage list among the papers?

The Witness: This is the stowage number.

Salvatore Minucci—Direct.

Mr. Gucciardo: Rather than to make continuing objections, will Your Honor entertain that all documents referred to from this point on, that I have the same objection because of no identity?

Judge Bernstein: You will have to tie that in.

By Mr. Manes:

Q. What does the stowage list indicate? A. The different hatches that the coffee is stowed in the ship.

Q. Does the stowage list indicate that there was anything but coffee on that ship at that time? A. No, it is all coffee on here.

Q. Could you tell from the stowage list about how much coffee was on the ship? A. 15,492 bags.

Q. Could you look through that list of documents then and see if you can find the timekeeper's activity report? A. Here (indicating).

Q. What dates?

Judge Bernstein: May we mark them Respondent's Exhibit 4-A, B, and so forth?

(The documents referred to, the timekeeper's activity report, was marked for identification as Respondent's Exhibit No. 4-A through 4-G.)

By Mr. Manes:

Q. I show you Respondent's Exhibit 4-A through 4-G, what does that indicate took place, Mr. Minucci? A. This was the activity that the foreman makes out and submits it to the timekeeper, the working of the hatches during the day's work.

Q. How many days does that represent? A. It represents from February 13, 1973 until February 16, 1973.

Salvatore Minucci—Direct.

Q. What ship does it relate to? A. Campeche.

Q. And does it indicate what cargo was discharged from the Campeche? A. It has coffee, pineapple, coffee, coffee, coffee, general cargo, special cargo, coffee, all coffee, coffee, coffee, and skins.

Q. What does skins mean? A. It would be shark skins mostly that they bring in, and coffee and skins on this one (indicating).

Q. What was the last day of that activity report? A. The 16th.

Q. Of February, 1973? A. That's right.

Q. Now, in those other documents which you have before you, is there a delivery order? A. Yes.

Q. And what is the date on that delivery order? A. June 22nd, 1973.

Q. And it is issued under the logo of what company? A. Trucking company you are talking about?

Q. Well—

Mr. Manes: I would like to have this marked as Respondent's Exhibit 5.

(The document referred to, delivery order dated June 22, 1973, was marked for identification as Respondent's Exhibit No. 5.)

By Mr. Manes:

Q. Are you familiar with the name on that, sir? A. COFINCO, the consignee.

Q. And does that delivery order indicate where the items were delivered in care of the consignee? A. ERA trucking.

Q. ERA Trucking? A. Right.

Q. Where was the delivery made? A. COFINCO.

Salvatore Minucci—Direct.

Q. Where did the trucker pick it up, at Pier 20, Staten Island? A. Yes.

Q. What was the nature of the cargo picked up? A. Three-hundred and forty-seven bags of coffee.

Q. In the upper right hand corner of that COFINCO log is there any indication as to when the cargo arrived, and where was it shipped from? A. It arrived on 2-10-73.

Q. Is there any indication by what carrier the cargo arrived at the port, or at the pier, I should say? A. Mexican Line.

Q. Is the name of the ship also included on that?

Mr. Gucciardo: I conceive that it contains Campeche, but—

By Mr. Manes:

Q. Now, Mr. Minucci—

Judge Bernstein: Just a minute.

Mr. Manes: Now, in those other documents, is there a document known as a gate pass?

The Witness: Yes, sir, right here (indicating).

Mr. Manes: I offer Exhibit 5.

Mr. Gucciardo: I object to any offer in evidence until it is tied in, Your Honor. There is no showing that this is the same substance that the Claimant was engaged in at the time of the accident.

Judge Bernstein: The objection is noted, and 5 will be admitted into evidence.

Mr. Gucciardo: Your Honor, I believe your ruling before was that you were identifying it, and not admitting it, and now you are admitting it.

Judge Bernstein: I am admitting these exhibits.

Mr. Manes: I would like to offer this.

Salvatore Minucci—Direct.

(The document referred to, gate pass, was marked for identification as Respondent's Exhibit No. 6.)

By Mr. Manes:

Q. This document denominated gate pass, Mr. Minucci, what function does that serve? A. Well, when the truckman arrives at the pier he first goes to the gateman and gets a gate pass, and the name of the truck and his license plate number, and the name of the ship, and what he is picking up.

Mr. Manes: Will Mr. Gucciardo stipulate that 364 bags were passed out on the gate pass?

Mr. Gucciardo: Yes, I will stipulate to that, that it contains that information.

Mr. Manes: Yes.

By Mr. Manes:

Q. Now, you have another document there, do you not, Mr. Minucci, and what is that document?

Judge Bernstein: Are you offering number 6, Mr. Manes?

Mr. Manes: Yes, I am, Your Honor.

Judge Bernstein: Same objection?

Mr. Gucciardo: Same objection, yes, Your Honor.

Judge Bernstein: Same ruling.

(The documents referred to, heretofore marked for identification as Respondent Exhibit Nos. 3 thru 6, inclusive, received in evidence.)

Mr. Manes: Exhibit 7.

Salvatore Minucci—Direct.

(The document referred to, tally of merchandise delivered was marked for identification as Respondent's Exhibit No. 7.)

Judge Bernstein: There is a reverse of this document. A reverse side to this document. The reverse side will be marked Exhibit 7-A.

(The document referred to, the reverse side of Respondent's Exhibit No. 7, was marked for identification as Respondent's Exhibit No. 7-A.)

Judge Bernstein: Do you know who William J. Gilfoyle is?

The Witness: It might be the checker, Your Honor.

Judge Bernstein: Here.

The Witness: That is the checker.

Judge Bernstein: Who does he work for?

The Witness: Pittston Stevedoring.

Judge Bernstein: Are you offering this, Mr. Manes?

Mr. Manes: Yes, I am.

Mr. Gucciardo: Same objection, Your Honor.

Judge Bernstein: Admitted.

(The document referred to, heretofore marked for identification as Respondent's Exhibit Nos. 7 and 7-A received in evidence.)

By Mr. Manes:

Q. Respondent's Exhibits 7 and 7-A, Mr. Minucci, is what document? A. 7 is a tally made up by the checker when he delivers the cargo to the truck, and he records it on this tally.

Salvatore Minucci—Direct.

Mr. Manes: Mr. Gucciardo, will you concede that the tally of the merchandise delivered to the trucker on June 27, 1973 is for 364 bags of coffee which arrived on the S. S. Campeche?

Mr. Gucciardo: I will concede that that documents reflects the entry without conceding that this was the same goods in question.

Mr. Manes: All right.

By Mr. Manes:

Q. The longshoremen perform many functions, do they not, Mr. Minucci? A. Yes, they do.

Q. And are they always engaged in loading or unloading of a ship? A. Not all the time.

Q. What other functions do they perform? A. Load trucks, lighters, unload them.

Q. And does it happen that on occasions cargo remains on the pier for a period in excess of ten days? A. Yes, it does.

Q. What is so sacred about that ten day period? A. Well, they do not always have ten days, counsel. Some companies only get six days.

Q. What is the reason for that? A. I don't know the reason, but I know the Mexican Line coffee gets six days, and the Brazilian Line, it gives them ten days.

Q. And if cargo remains on the pier a certain number of days what is the procedure? A. Charge them demurrage.

Q. Was any demurrage charged in reference to this cargo? A. There was none.

Q. There wasn't? A. No.

Q. How did you determine that? A. Mr. Butewicz, the foreman, looked up the records.

Mr. Gucciardo: Objection. It is not within the possession, and no documents referring to it. Mr. Butewicz was the person here this morning.

Salvatore Minucci—Direct.

Judge Bernstein: Then let Mr. Butewicz testify about that.

By Mr. Manes:

Q. To your knowledge, you know nothing about the demurrage charges, or non-charges in this instance? A. No, I do not.

Q. Do truckers sometimes load the trucks themselves, without the assistance of longshoremen? A. No.

Q. Why is that? A. One man can't pick up a bag of coffee.

Q. Is there any rule or regulation against it? A. Well, the ILA would not like it.

Q. Does Pittston employ people who are not in the category of longshoremen who do any loading or unloading operations? A. No.

Q. They are all longshoremen? A. Yes.

Q. Does Pittston have warehouses in which they store goods that have been shipped in?

Mr. Gucciardo: Objection, Your Honor. Pier 20th Street, and—

Mr. Manes: The next question is whether or not the cargo area is—I want to make it clear.

Judge Bernstein: I will permit the question.

By Mr. Manes:

Q. Do they have warehouses? A. Yes.

Q. Is there such a warehouse on Pier 20 or 21? A. No.

Q. Solely Pouch Terminal? A. Yes.

Mr. Manes: That is all.

Judge Bernstein: Cross examination.

Mr. Gucciardo: Yes.

Salvatore Minucci—Cross.

Cross Examination by Mr. Gucciardo:

Q. Mr. Minucci, isn't it true where Pittston has the warehousing it is carried under a different name, Pittston Warehousing Company? A. Pittston Warehouse.

Q. And not Pittston Stevedoring Company? A. Yes.

Q. So the stevedoring operation is one company, and another company, even though they may be the same principals involved, and I mean the same owners, the same people in interest. A. It is possible.

Q. Now, demurrage is in the form of a penalty, is it not, because the stevedoring company does not want its facilities at Pier 20th Street to be used as a warehouse, is that correct? A. That's right.

Q. And as a matter of fact, if they started using Pier 20th Street as a warehouse, they would knock it out of the function of loading and unloading vessels, is that correct? A. We might as well go out of business.

Q. I notice, incidentally, with reference to the documents, you did not pick them out, did you? You did not take them out of the box, or have anything to do with getting them together, is that correct? A. Yes.

Q. And it was Mr. Butewicz, wasn't it? A. Yes.

Q. And actually you physically do not keep the records, and they are kept by various personnel run by or employed by the Pittston Stevedoring Company, is that right? A. Correct. Are you talking about all the records here, counsel?

Q. I am talking about the records that you have been testifying to. You physically do not keep them, do you?

A. I keep some of them.

Q. What do you keep? A. The activity.

Q. And the only record you keep is the activity? A. Right.

Q. Let's go to the activity sheet. Will you get it out, please? A. There are quite a few of them here.

Salvatore Minucci—Cross.

Judge Bernstein: Do you mean the time sheets?

The Witness: No, Your Honor.

Judge Bernstein: What number exhibit is that?

The Witness: Four.

By Mr. Gucciardo:

Q. Does this activity sheet have to do with the activity of the Pittston Stevedoring, and men working a ship? A. That's right.

Q. And was there a cooper working in those activity sheets? A. I have to look at them.

Q. Sure. Does the indication of a cooper mean that there was some damage to the cargo and, therefore, it had to be repaired? A. No, not necessarily.

Q. What is the function of a cooper? A. To fix cargo if there is damage to it.

Q. And if cargo is damaged, bags are ripped, and so forth, does it cause a lighter range in weight ultimately when it is weighed by the weighers on the dock? A. Not necessarily. We could recopper the bags and reweigh them, and we give them an exception on it.

Q. But you do not know, of your own knowledge, to what extent the cooper had to make these repairs, or what cargo would have been lost, and so forth, is that correct? A. I don't even know if there was a cooper there.

Judge Bernstein: We will take a recess at this point.

(Short recess.)

Judge Bernstein: The hearing is resumed. Will the witness please resume the stand?

By Mr. Gucciardo:

Q. Mr. Minucci, the timekeeper's activity report, which is Respondent's Exhibit 4, and more specifically, one that

Salvatore Minucci—Cross.

is labeled Thursday, February 15, 1973, does that show that a cooper worked onboard that vessel from eight in the morning until 12 noon, and then again from one in the afternoon until six at night?

Judge Bernstein: On exhibit—which one, counsel?

Mr. Gucciardo: I better come up there and point it out (indicating).

Right here, Exhibit Number 4-B.

By Mr. Gucciardo:

Q. Eight in the morning until 12 noon, and one in the afternoon until eight at night, is that correct? A. That's right.

Q. And, Mr. Minucci, does it sometimes happen that cargo is damaged, like coffee bags, and swept up and put back in bags by coopers, and sewed up and sold as salvage cargo? A. Yes.

Q. And when it is sold as salvaged cargo, there is no demurrage charge on it, is that correct? A. No.

Q. And if in fact if there is no charge, it would indicate that some cargo was sold as damaged cargo, would it not? And that would be a possibility? A. It would be.

Q. And where you have such a situation that cargo is damaged, and they look to salvage it, there is a long period of time that elapses from the time that the cargo actually has landed on the dock until it is gotten rid of through normal channels, is that correct? A. Yes.

Q. Is it also not true that all of the Respondent's Exhibits, Numbers 1 through 7, specifically refer to cargo, and coffee bags in this particular case, and the name of a ship, and that is the Campeche? A. Yes.

Q. And also when the cargo is delivered to a consignee, even though it is salvaged cargo, it relates to a ship on

Salvatore Minucci—Cross.

which it came, and all papers and documents are signed in relation to this particular cargo identifying the ship in which it came, is that correct? A. Which one are you talking about, the sound cargo, or the salvaged cargo?

Q. About the sound or salvaged cargo, and is it not identified with the ship from which it was discharged?

A. The sound cargo is.

Q. Is that your position, that the salvaged cargo is?

A. Counsel, we have so many materials on that pier that all we do is sweep it up and throw it in the back from the various ships.

Q. The Campeche is on a regular run from Mexico to New York is it not? A. Occasionally.

Q. Did you hear the Claimant testify, and I believe you were in the room, that that ship came on the average of once a month? A. I did.

Q. Do you have any reason to dispute that? A. Yes.

Q. You allege that it came less or more than once a month? A. I allege that it does not always go to Mexico.

Q. But does it come into New York about once a month? A. Once a month, sometimes twice a month.

Q. And is it not true that whether it goes to Mexico or some other southern country, it is still in the Western Hemisphere, is it not? A. Right.

Q. And that is a coffee run basically, is that correct, sir? A. Mostly coffee.

Q. And is it also not true that the trucking companies that come in and pick up that cargo are usually the same trucking companies, depending on which consignees the cargo is destined for? A. Usually.

Q. So that ERA, for an example, which was mentioned in the documents, Respondent's Exhibits 2 through 7, is a company that could come into your piers a couple of times a month, or a couple of times a week? A. They could.

Q. And it would even come in twice or three times the

Salvatore Minucci—Cross.

same day where you have as many cargo bags? A. Yes, we could give them an eight o'clock appointment and a ten o'clock and a one o'clock.

Q. Mr. Minucci, as a terminal manager, is it not true that if a man is working on loading or unloading a truck, as the case may be, and if he is finished with that particular work, and work for sorting for him on a ship, that you would directly assign him to the ship for such purpose? A. No.

Q. You deny that? A. Yes, I do.

Q. Do you know whether or not Mr. Dellaventura worked for you as a sorter? A. Yes, he did.

Q. Do you deny that that work as a sorter is done onboard vessels? A. It is done onboard vessels.

Q. And are you telling us then that Mr. Dellaventura's work for a morning would be finished as terminal labor and then he cannot work in the afternoon onboard a vessel? A. At one o'clock?

Q. Yes. A. If the vessel is there, yes, he can very well go there.

Q. The same day? A. The way you asked it before—why the ship is working—

Mr. Gucciardo: Objection, Your Honor, he answered the question and he is arguing with me.

Judge Bernstein: You should not argue with him. Let's proceed. Proceed, Mr. Gucciardo.

By Mr. Gucciardo:

Q. During the recess did you discuss this case with Mr. Chiarello? A. Yes.

Q. Is Mr. Chiarello the boss at Pittston Stevedoring Company? A. He is in charge of the safety and the claims department.

Q. Isn't he a principal stockholder?

Salvatore Minucci—Cross.

Mr. Manes: I object to that question, as to relevancy. As to Mr. Chiarello's status. What relevancy is that?

Judge Bernstein: What is the relevancy of this?

Mr. Gucciardo: Your Honor, I am trying to point out that the boss is here, and the boss had a discussion with him during the recess about the particular points about which he is testifying.

Judge Bernstein: Go ahead.

By Mr. Gucciardo:

Q. Did you discuss with Mr. Chiarello the particular point at which we left off prior to recess, about the identity of the bags? A. I did not think so, no.

Q. Did you discuss anything with him? A. We discussed a few things, yes, sir.

Q. Did you discuss this case? A. Yes.

Q. Is there any other reason why demurrage would not be charged for cargo that had remained on the pier in excess of the free time? A. Lots of reasons.

Q. Could you state those reasons? A. Sometimes we discharge the ship, and the cargo is mixed, and we have to get it ready for the consignee, and we would extend the free time to them, and sometimes it is damaged, or the coffee has to be reconditioned, and the consignee won't take it, and they are not liable for that, and we have to extend the free time and give them time to come in and recondition the coffee for them to pick it up.

Q. So that your job actually is not completed with reference to the delivery of that cargo to the consignee until such time as that cargo is actually accepted in good condition by the consignee, or the loss accounted for, is that correct? A. Correct.

Q. And, therefore, anything that has to be done in relation to restoring that cargo on which there is no demurrage

Salvatore Minucci—Redirect.

charged is parted and parcel of the unloading operation, and the delivery to the consignee?

Mr. Manes: I object to that conclusion entered into by Mr. Gucciardo. That is the ultimate fact. He is asking this witness for a conclusion, which I think is only for the Judge to determine.

Judge Bernstein: I will permit it.

Mr. Gucciardo: May I have that question reread? (The pending question, as recorded, was read by the reporter.)

By Mr. Gucciardo:

Q. Do you understand that? What is your answer? A. That's right.

Mr. Gucciardo: No further questions.

Redirect Examination by Mr. Manes:

Q. Mr. Minucci, putting all the documents together, and that is Respondent's Exhibit 2 through 7, and looking at them again, can you tell from considering them as a whole, whether or not the coffee which Mr. Dellaventura was working on on June 27, 1973, was part of the cargo which arrived on the Campeche?

Mr. Gucciardo: Objection, Your Honor, no identity of the particular cargo, and where this person was injured in the handling is the same cargo.

Judge Bernstein: He is asking this gentleman whether he has any knowledge that we do not have. He is asking if he can tell, and I will permit that question, and that question can be answered.

Mr. Gucciardo: He is identifying the cargo that my client got hurt on as being the exact cargo that

Salvatore Minucci—Redirect.

this man is testifying to, and he said he did not see it, and does not know if it is the same cargo in question.

Judge Bernstein: I understand the question and the objection, and the objection is overruled.

By Mr. Manes:

Q. You may answer. A. Well, taking the manifest and the delivery tally, and the marks on the delivery tally, they are the same marks on the manifest.

Q. When you speak about marks, do they refer to certain key markings? A. Yes, 46 is the bill of lading, and we have a 47 on the tally.

Q. Are there any other similarities in markings? A. Yes, the lead marker is the same.

Judge Bernstein: What is the 46 and the 47?

The Witness: The bill of lading numbers, Your Honor.

Judge Bernstein: Would those numbers be on bags of coffee?

The Witness: No. The mark on the bag would be PLUMA. You see, you have here the lead mark, which is PLUMA, and the number 12 is the chop mark.

By Mr. Manes:

Q. Is that contained on the tally sheet? A. Yes.

Q. Is there a PLUMA 12 typed on the manifest? A. We have one PLUMA with a JL, and we have a PLUMA—that is the plain PLUMA on the manifest.

Q. Well, Respondent's Exhibit 3, and I have one other exhibit to offer, and I show you, Mr. Minucci, that document—

Salvatore Minucci—Redirect.

Mr. Manes: I would like to have this marked in evidence as Respondent's Exhibit 8, Your Honor. That is another manifest.

Judge Bernstein: All right.

(The document referred to, a manifest, was marked for identification as Respondent's Exhibit No. 8.)

By Mr. Manes:

Q. What does this document represent, Mr. Minucci?

A. It is also a manifest from the Campeche.

Q. Does that have certain key markings on that? A. Yes, 56 and 57, which is also on the tally.

Q. Does that indicate to you, therefore, that the coffee is the same as delivered to the Campeche? A. Yes, it is, because the same marks on the tally are the same marks on the manifest.

Q. One additional question, each ship which appears at the port is given an inbound number, is that correct? A. Correct.

Q. What was Campeche's inbound number? A. Inbound was voyage 118.

Q. Is that used for any identification purposes on other documents? A. The reason for that is you get the Campeche so many times in one year because it may conflict with the first one, and we know voyage 118, and the ship will go out westbound, and will be 119, and come back southbound and will be 120.

Q. Does the tally sheet bear that voyage number? A. Yes.

Q. What is it? A. 118.

Mr. Manes: I have no further questions of the witness, Your Honor.

Salvatore Minucci—Recross.

Recross Examination by Mr. Gucciardo:

Q. Mr. Minucci, in salvaging cargo, is it possible to use the same bags that were damaged in order to repack the cargo? A. Well, I doubt it very much. Some of them bags get badly damaged.

Q. And only partially damaged, and the cooper sews them up so that they are usable, is that correct? A. Yes, turns it inside out and marks it sweeps, after he fills it up.

Judge Bernstein: What does that mean, sweeps?

The Witness: Just a pickup off the floor after it is salvaged.

Judge Bernstein: Would that appear on the tally sheet?

The Witness: Yes, if we deliver sweeps, it appears on the tally sheet.

By Mr. Gucciardo:

Q. Say a 150 pound bag, and only lost 20 pounds, isn't it possible to sew up the bag? A. Yes.

Q. And the marking would show? A. Yes.

Q. And it would be put on the side, and it would be damaged cargo, and short on weight? A. Not necessarily. The truckman may take it, and he may reject it.

Q. In which event you have to go through the procedure to get the consignee to take it less the claim of damage in the cost of shipping? A. That's correct.

Q. Now, in your experience as a terminal manager, does it happen on occasions that a consignee gets a whole load of cargo, and not ready to accept it, and he will tell you to deliver it to Pouch Terminal? A. If he is not ready to accept it, why should he want me to deliver it to Pouch Terminal?

Q. To warehousing. A. It is possible, sure.

Salvatore Minucci—Recross.

Q. And in that event you would not furnish the warehousing facilities, but you would, by hi-lo, take it to the head of the pier, and the Pouch Terminal people take it from there? A. If the delivery order says to take it to Pouch Terminal we do that, and then the Pouch people take it from there.

Q. You would not warehouse it yourself, that is the point. A. No.

Mr. Gucciardo: Thank you.

Judge Bernstein: May I see the two exhibits the tally sheet and the last exhibit, Respondent's Exhibit 8?

The Witness: Yes.

Judge Bernstein: Incidentally, I do not think that number 8 has been offered in evidence.

Mr. Manes: I offer that, Your Honor.

Mr. Gucciardo: What is number 8?

Mr. Manes: Another part of the manifest.

Judge Bernstein: Eight is a report and manifest.

Mr. Gucciardo: Same objection, Your Honor, as I voiced before, there is no identity of this cargo in question with the actual cargo when the Claimant was injured.

Judge Bernstein: The document is admitted into evidence.

(The document referred to, a manifest, heretofore marked for identification as Respondent's Exhibit No. 8, received in evidence.)

Judge Bernstein: Where on Exhibit 8, Mr. Minucci, do you find the numbers? Did you say the numbers identify the bag?

The Witness: No, the PLUMA.

Salvatore Minucci—Recross.

Judge Bernstein: Now, on 8 there is a PLUMA 12.

The Witness: Right, and here is a PLUMA 12 here (indicating).

Judge Bernstein: And PLUMA is one bag, is it? What does PLUMA represent?

The Witness: PLUMA is the lead mark, the mark that the consignee uses.

Judge Bernstein: How many bags of coffee would that cover?

The Witness: In that particular bill of lading it covers 1,186 bags.

Judge Bernstein: Is it your testimony that part of the cargo from the Campeche on this particular occasion included 1,186 bags of coffee identified by PLUMA 12?

The Witness: Yes. He delivered it on 6-27, and claimed the injury—

Mr. Gucciardo: If Your Honor please, I am going to object to your question on the grounds you are identifying that cargo as being the cargo handled by the Claimant.

Judge Bernstein: I am not doing a thing but trying to determine what the facts are, and the objection is overruled.

Now, this tally sheet refers to PLUMA 12, doesn't it?

The Witness: Yes.

Judge Bernstein: And then on the total opposite PLUMA 12 there is a number of 7253, and is that bags of coffee?

The Witness: Yes, the driver, it looks like in this instance, counted the bags on the pallet, which we always put 12 on, and each time he gets the figure he adds it across.

Salvatore Minucci—Recross.

Judge Bernstein: And is it your testimony that that portion of the tally sheet identified 186 of the PLUMA 12 bags?

The Witness: It is part of this here (indicating).

Judge Bernstein: Part of that?

The Witness: Yes.

Judge Bernstein: All right.

Now, there is also a key 47 section of the tally sheet, isn't there?

The Witness: Yes, that's on another exhibit, Your Honor.

Judge Bernstein: And what does the 47 refer to?

The Witness: This is the same as this (indicating).

P-47 is a key number that the clerk puts in his book, so when the delivered order is sent to him he has the book from one to 50, and this way when he comes in he knows what page to turn to quick, and puts that on the delivery order.

Judge Bernstein: Why doesn't this have a PLUMA number.

The Witness: May I see it, please?

This is on key 47.

Judge Bernstein: Yes.

The Witness: I do not know why it does not have it on there. It has a JL on it, though.

Mr. Gucciardo: Will Your Honor tell me what exhibit you are reading from?

Judge Bernstein: We are looking at 7, and we are looking at 2.

Now, what does JL mean?

The Witness: A chop mark. They have a lead mark, and some people will use a JL for a chop mark.

Judge Bernstein: What is a chop mark?

The Witness: The reason for that, Your Honor, is this PLUMA imports a lot of coffee.

Salvatore Minucci—Recross.

Judge Bernstein: Who is PLUMA?

The Witness: The mark the consignee uses on his bags.

Judge Bernstein: A shipper?

The Witness: A consignee.

Judge Bernstein: Is PLUMA a brand name of any kind?

The Witness: PLUMA may have different grades, and what they do is put a JL on one back, a chop number, or a range of numbers to distinguish the type of coffee.

Judge Bernstein: Now, another category is called PLUMA GA.

The Witness: GACE, which is used for the chop mark, and that shows on the key 56.

Mr. Gucciardo: Is that chop, C-H-O-P?

The Witness: C-H-O-P.

Judge Bernstein: Key 56, and you are pointing to Exhibit 8, and then there is a fourth category on Exhibit 7 called OFBT, and what is that?

The Witness: Off-flatbed truck.

Judge Bernstein: That is another category?

The Witness: No, the truck it was loaded on.

Judge Bernstein: Does this tally cover all merchandise that the Claimant was loading at the time that he was injured?

Is there any other merchandise he would have been loading at the time he was loading?

The Witness: 364 bags would be just about all that would fit on that truck, Your Honor. There would be no room for anything else, unless he wanted to go all the way up with it.

Judge Bernstein: Would there be another tally for other merchandise he was loading on that day?

The Witness: I do not know, Your Honor.

Judge Bernstein: Thank you.

Salvatore Minucci—Recross.

By Mr. Gucciardo:

Q. Respondent's Exhibit 7, and under order number appears to be changed, and is that correct, was it changed? It looked like it was one something or other, and changed to 128. A. No, changed from the two to the one.

Q. From the two to the one? A. Yes.

Q. In any event, that is not the original number that appeared on the document when it was first made up, is that correct? A. That is not an order number. That is the voyage number of the ship.

Q. I am looking in the box that says order number. A. On the tally?

Q. Pittston Stevedoring Company. A. If you know, counsel, the name of the ship Campeche, and right alongside there.

Judge Bernstein: He is explaining that they continue the identification into the order block.

The Witness: Campeche Voyage 118.

By Mr. Gucciardo:

Q. Do I have a different one, I have 128.

Judge Bernstein: It is difficult to tell whether it is a one or a two.

The Witness: Mine clearly indicates two, and it is a photostat.

Judge Bernstein: It looks like a two to me. It is difficult to tell.

By Mr. Gucciardo:

Q. In any event, one or two, and it is a number that has been changed, Mr. Minucci, is that right? A. It looks like it has been changed, counsel. I am not saying it was.

Joseph Atanasio—Direct.

Mr. Gucciardo: That is all.

Judge Bernstein: Mr. Manes?

Mr. Manes: I have no other questions for this witness.

In reference to the exhibits, it is obvious that a number of them have been inked out and changed in all directions, and that is the tallyman's problem.

Mr. Gucciardo: I object to counsel testifying whose problem it is, or how it came about, and that is to be established by the witness, Your Honor.

Judge Bernstein: Yes, it is to be established by the witness.

All right, thank you very much, Mr. Minucci.

(Witness excused.)

Judge Bernstein: Are there any further witnesses?

Mr. Manes: No, Your Honor.

Judge Bernstein: Mr. Gucciardo?

Mr. Gucciardo: I did want to put a witness on.

Whereupon, JOSEPH ATANASIO was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gucciardo:

Q. Will you give your name and address for the record, please? A. Joseph Atanasio, 2246 64th Street, Brooklyn, 11204.

Q. Mr. Atanasio, would you please give us your experience for the record on the waterfront, and that is, I want you to state in what categories you have been employed, and if you have any union affiliation, please state that for the record?

Joseph Atanasio—Direct.

Mr. Manes: Your Honor, I object to this line of questioning. I fail to see the purpose that this witness is being offered. The issue is simply whether or not this accident occurred in the course of maritime employment. This man is not a witness to the accident, and did not participate in the activity, and was not there at the time of the accident.

I do not know the reason for his testimony.

Mr. Gucciardo: He is an expert witness, Your Honor.

Judge Bernstein: The objection is overruled. Go ahead.

By Mr. Gucciardo:

Q. Can you answer the question? A. I have had about 32 years experience on the waterfront. I started around 1939 or '40, and I worked in various categories. I was a longshoreman and started to work in the hold of the vessel, and worked as dock labor, and drove all kinds of equipment, such as tractors, cranes, carriers for lumber.

I have worked on explosives during the war, and that was for four years, during World War II. I was a hatch boss, a winch operator, and I was a deckman.

I was secretary-treasurer of the Carpenters Union, and acting secretary-treasurer, and I was a trustee for seven years.

I have worked as a marine carpenter storing cargo aboard ships. I worked as a cooper, and I have worked as a maintenanceman, and now I am presently retired.

Q. You said you were affiliated with the Carpenters Union, and is that a subdivision of a major union? A. International Longshoremen's Association, Local 958.

Q. And all of the affiliation, is that in conjunction with the loading and unloading of vessels? A. Yes, it is, with the International Longshoremen's Association.

Joseph Atanasio—Direct.

Q. Did you also work as a hiring agent for the various shipping agents? A. Yes, I worked for the hiring agents for the Chilean Line. I went down to the hall to hire carpenters to do the shoring of the Chilean Line ships of the State in Brooklyn.

Q. Is that the same as terminal labor and other types? A. It is the same hiring hall.

Q. Are you familiar generally with the loading and unloading of cargo vessels in New York and New Jersey? A. I am.

Q. Are you familiar with Pier 20th Street in Staten Island? A. I am.

Q. Do you know what demurrage is? A. Yes, sir.

Q. Will you describe what this is? A. Well, the consignee of the cargo is notified by the shipper, or the stevedore, whoever has the responsibility, that the cargo will be ready for delivery on a certain date, and he has somewhere between five and ten days to pick up his cargo. If it is not picked up in the designated time he will be charged a fee for leaving his cargo on the pier, which is called overtime.

Q. Does it happen in discharge operations, that even though there is no demurrage charge, that the cargo is nevertheless delivered to the consignee? A. It happens that the cargo stays on the pier.

Q. Would you tell us for what reasons cargo would be left remaining on the pier anywhere from two weeks to three weeks? A. It is possible that it did not clear Customs, because the consignee has to get an okay from Customs. It might be not ready. It would be that the cargo was damaged, or various different types of cargo that the Health Department does not issue the document that the consignee could pick it up.

It, therefore, remains on the pier, and if that happens, then the consignee, the company is not charged extra demurrage.

Joseph Atanasio—Direct.

Q. So that cargo can be legally delivered to a consignee without the Department of Agriculture or the Health Department clearing it without Customs, clearing it and all of the other various government agencies that must clear it? A. No, it would not be released.

Q. And until such time as its clearance is obtained that cargo remains on the pier? A. Yes, sir, remains on the pier.

Q. When the cargo is then ready for release, assuming that it was either damaged or Customs held it up, or the Department of Agriculture didn't issue the health certificate, what procedure is followed after it is then released? A. Well, I would say that the steamship line, or somebody in the office, one of the clerks pertaining to the operation of that particular cargo, would send out the letter to the consignee saying that the cargo is ready, or the consignee would have the proper permits that the cargo has been released from the various agencies, and he would send his truckman down to the pier with the truck with papers to pick up the cargo.

Q. And if it was the consignee's fault that he failed to pick up the cargo when it was ready, would he then be charged demurrage? A. He would be charged demurrage.

Q. So the fact that there is no demurrage charge would indicate that there was something wrong with the shipment in some form or fashion? A. With the shipment of cargo, yes.

Q. As a matter of fact, while there is a defect, such as a cargo claim, the Department of Health, or for whatever reason it is being held on the pier, does the shipper have the right to take that cargo from the pier and put in a warehouse? A. Well, if the consignee's cargo is destined to stay on the pier because of some irregularity or something that something is wrong with the cargo, and he would never want his cargo to be put in the warehouse and charged for it.

Joseph Atanasio—Direct.

He would say to send him a note, or the consignee's cargo, and there is something wrong with it, and it would stay on the pier.

Q. Now, are you familiar with sorters and terminal labor and the type of work that they do on the pier? A. Yes, sir.

Q. And in your experience as a foreman and terminal laborer and other categories that you mentioned, is it possible for a terminal labor man who is working on a truck to be told, while he is working on the truck, to go work and sort on a ship? A. Well, if a ship is in port, and they need a sorter, and they know that a particular man is a sorter, they would give him the papers and say to go to hatch number three, because they need a sorter.

Q. You mean the sorting papers? A. Yes, because when, or before the ship comes in, the steamship line has papers which they say that this is the plan of the ship, and there is where the cargo is, and whatever hatch you go in, and if you are a sorter you go in and get the layout of the ship.

Q. Is it possible for the terminal laborer who is loading a truck of coffee beans to be interrupted, and somebody say to him to go unload a lighter?

Mr. Manes: Your Honor, I have to object to the form of the question.

I have been sitting here listening to leading questions from the so-called expert witness.

By Mr. Gucciardo:

Q. Suppose a terminal labor man unloaded a truck, and a lighter comes in, and could the terminal labor manager assign workers for the lighter? A. Well, when he finishes he should take his men and check with whoever you have, and they usually would have a checker, and the fel-

Joseph Atanasio—Direct.

low that helps the trucker deliver, and the machine driver.

Q. And can this work assignment be done between eight and twelve and one and five? A. Yes.

Q. However, where it comes to working on a ship, what is the usual practice if your terminal laborer—how many hours are you required to work in that capacity before your work category on the ship can be changed? A. Well, I didn't understand that question too well.

Q. If you are hired as terminal labor in the morning, how many hours of work are you guaranteed to do in that capacity as terminal laborer? A. Four hours.

Q. And it is at the end of four hours, and can you then be assigned to work on a vessel? A. Yes.

Q. And how many hours would that be? A. A four hour period.

Q. And that can be done both in the same day, on the dock and on the ship? A. If that vessel is in that day they assign him on the vessel.

Q. However, in the morning, for example, if the work of loading a truck is finished, can he be reassigned within that four hour period to a lighter? A. Yes.

Q. And was this reason for the difference in time? A. You take a terminal labor man, or a longshoreman, and he has the category of terminal labor, extra labor, holdman, sorter or dock laborer, and he goes on the pier to work and in the morning he is told to go help load the trucks, or help load the lighter, and the man gets hurt on-board the ship and taken away, and they need a replacement, and this category shows he is the holdman or whatever it is, and he can send him on the ship.

Q. If he refuses such reassignment what happens to him? A. If his classification calls for him to be reassigned and he does not take it, and a man on the guaranteed annual wages, the company or timekeeper or foreman could say that you have to go, and if you don't want

Joseph Atanasio—Cross.

to go you can be debited today, any three debits and you are through for the year.

Q. How much is the guaranteed wage? A. I would estimate close to \$14,000 a year.

Q. In 1973 how much was it? A. In 1973 it was a little over \$12,000.

Q. And would a man get guaranteed wages whether he is working or not working? A. Yes.

Q. So that actually if the man only works three months out of the year would he then be paid for the balance of the nine months, the total \$12,000 in the period of 1973?

A. In the period of 1973 if you didn't show up at the hiring halls for 15 days you were disqualified from guaranteed wages, and if you got five demerits you would be disqualified for the guaranteed wages, which would be under \$12,000, but if you always badged in, and no debits, and you get paid for the other nine months.

Q. So then is it the usual practice for longshoremen to jeopardize their guaranteed annual wages by jeopardizing their demerits? A. No.

Mr. Manes: Your Honor, it is interesting to learn about the longshoremen's rights, but what relevancy does it have to this proceeding?

Judge Bernstein: You made the point about demerits and I think we can move on.

Mr. Gucciardo: I have no further questions of this witness.

Judge Bernstein: Mr. Manes?

Cross Examination by Mr. Manes:

Q. You have not worked on the waterfront in how long?

A. February of '72.

Q. You retired then? A. Yes.

Q. You get the union pension? A. Yes, sir.

Colloquy.

Q. You were not injured by any chance, were you? A. I was injured in 19—

Mr. Gucciardo: Objection, Your Honor. His injuries have nothing to do with the case.

Judge Bernstein: The objection is sustained.

By Mr. Manes:

Q. What are the circumstances under which you came down to testify? A. The office of Israel, Adler, Ronca and Gucciardo have my case, and at one or two, or three times I was called into the office in reference to the injury, and my various work activities, and they know my background so he asked me if he needed me, you know, to testify in a case, and would I be willing to come down, and I said that if I am not hurting anybody then I would come down to testify in any case for him.

I want to tell the truth in the case.

Q. Have you testified in any other cases? A. I have testified in cases as an expert witness as far as jurisdiction was concerned.

Q. You are interested in the issue of jurisdiction? A. I am not interested in it.

Mr. Manes: I have no other questions.

Judge Bernstein: Mr. Gucciardo?

Mr. Gucciardo: I have nothing else, Your Honor.

Judge Bernstein: Thank you very much.

(Witness excused.)

Judge Bernstein: Mr. Gucciardo, do you have any other witnesses?

Mr. Gucciardo: I have no further witnesses, Your Honor, but I have a motion.

Judge Bernstein: I will hear your motion.

Mr. Gucciardo: I move that the Respondent's Ex-

Colloquy.

hibits 2 through 7 be stricken on the grounds that they have not been established as identifying the actual cargo involved in this accident with the cargo mentioned on the various exhibits.

Judge Bernstein: Mr. Manes?

Mr. Manes: Your Honor, I think we have established a continuity between the cargo delivered by the Campeche on February 13, 1973 with the cargo involved in the truck loading operation during which time the Claimant was injured.

First of all, we have established that the voyage number for the Campeche, 118, has remained the same throughout the document.

We have established on the basis of the Respondent's exhibits in reference to the two manifests, and that is Exhibit Number 8 and Exhibit Number 2, and comparing those with the tally sheet and comparing those with Exhibit Number 5, the COFINCO Incorporated delivery order we have established that PLUMA 12, 364 bags of coffee, was part of the total of some 15,000 bags of coffee which was offloaded from the Campeche.

We have established also that PLUMA JL and CAG are various amounts of bags and retain the same identification marks, and I think the word is chop number throughout from the inception of their listing on the manifest until their final delivery to the ERA Trucking Company.

Mr. Minucci, he is qualified as an expert witness, and he has had considerable experience on the piers, and taking all of the documents in order, there is such a continuity of events as to preclude the probability that the bags of coffee on which Mr. Dellaventura was injured on June 27, 1973, and part of the same cargo originally delivered in January of that year.

Mr. Gucciardo: Your Honor, before you rule, may I then make a few remarks on that?

Colloquy.

Judge Bernstein: Still on the motion. If you want to give me your summation.

Mr. Gucciardo: No, only in relation to this point.

Number one, Exhibit 7 shows changed numbers on the sheet.

Judge Bernstein: Let me say this. Whether or not the continuity has been established is something I will determine.

Nevertheless, I feel that these exhibits may be relevant, and I am going to admit them. That is my decision.

Mr. Gucciardo: Well, you make your decision even though I—

Judge Bernstein: You can make your argument, but I have not decided the case.

Mr. Gucciardo: There are changed numbers, and counsel said they have established a continuity, and whether you have changed numbers, the exhibit number means 128 heavily marked over, and probably one something or other, and two digits in that number have been changed, and I don't care how you look at it.

I have the same photostat that you have, and the change has been made on two of the digits, and what counsel relied on as being a continuity is not a continuity.

Secondly, I have established by means of the Respondent's own witness that this ship came in regularly, and that the trucker came in regularly to pick up cargo, and it is an easy matter, and let's assume for the purposes of my argument that this merchandise was delivered, and so forth, and easy for them to pick out this, and this, and say that since this is a regular consignee, and the ERA Trucking is a regular trucking company, that this has a wide span of time for this particular cargo.

Now, if Your Honor is really going to rely on that phase of it as being material to establishing jurisdiction, I am going to argue that this has to go by the board regardless of whether you so think or not.

Colloquy.

If we are going to rely on it, I think we should make sure of the evidence with the evidence presented to you today, and there was no showing by anybody who kept the records that they searched all of the records and these are the only records involving the truck on that particular day, or the only records involving that particular ship, and that ship may have come in, and the testimony is once or twice a month from February to June, and that is four months, and it is possible that it came in eight times, and if it came in eight times, can you imagine how many trucks would have to take it away, and the same truck would have to come down.

Of course, I am now going to argue, and let's assume that what my adversary says is true, that this cargo was delivered in February, and actually offloaded, and the ship in February, and actually delivered to the consignee in June of 1973, and as the unloading operation ceased within the term of unloading as we now understand it, and the Benefits Review Board—

Judge Bernstein: You are giving me closing argument.

Mr. Gucciardo: In effect it is my closing argument. You will permit me—

Judge Bernstein: I have denied the motion. I will permit you to continue.

Mr. Gucciardo: I did not mean to interrupt you, Your Honor.

Judge Bernstein: Go ahead.

Mr. Gucciardo: So that if Customs holds it up, or if there is a claim on the cargo, or some valid reason why the cargo has to be held on the pier, even for salvage purposes, this unloading operation, does it fully take place as the Board said, when the merchandise is put on the truck and the truck leaves the premises, and there is a signed receipt for it.

To hold otherwise would, once again, destroy the uni-

Colloquy.

formity that Congress said they wanted in evaluating the longshore cases.

Are we going to go into hair splitting delineations of when an activity starts, and when it begins, or should we look at the general character of the person being hired, and what is he expected to do?

My adversary objected when I tried to show that the terminal labor has to go on a ship, load ship stores, and the terminal laborer can even work as a sorter on a ship if he is classified, as he is in this particular case.

I say you have to look to the employer. You have to look to the employee, and what are they engaged in, and there is no question but that they are engaged in maritime activity, because their sole operation and their sole function at Pier 20th Street is to receive cargo to be loaded on a vessel, and to take cargo from a vessel to be given to consignees. They have no intervening function. They don't store. They don't process the merchandise in any form or fashion except if it is damaged in shipment, and then they have to look to salvage it, in which event they will get rid of it on that basis, but that is all they do, handle cargo that goes in and out.

The longshoremen who come in to work, that's all they do. We have unions involved here, and Your Honor well knows where there are different unions they are strict about the activities their employees can engage in.

This employee cannot engage in warehousing activities, and the witness, Mr. Minucci, so testified that if cargo had to be warehoused they would take it as he says, from the point of rest in the pier, and take it to the head of the pier area where the Pouch Company employees would then pick it up with their hi-lo's and bring it into their terminals, and the Respondent's Exhibit 1 shows that if they wanted to, the longshoremen, with their hi-lo, could go into the Pouch Terminal within the area in one clean sweep and

Colloquy.

eliminate the double payroll situation. That is not done for a very, very, very valid reason, and that the consignee must notify the terminal operator that it wants its stuff warehoused.

Once he does that, then they say, "fine, we do the work right to the pier, and even though this terminal is located adjacent to us, they pick it up from there."

They do not tell the shipper, no, that they will warehouse it for them, because if they were in the warehousing business what better way to get business than to have the ship notify them that they have to warehouse the stuff?

This is ready business for them, but they wouldn't. Your Honor can see by the looks of the pier that it is a finger pier, and the entire structure is covered by a building which is used to shelter the cargo in all types of weather, and a small narrow string piece, 15 to 20 feet, from which the ships tie up to, and cargo is loaded onto the string piece.

We must get away, in my opinion, from what the Respondent's have been trying to get us, as claims attorneys, to do, and that is to take a narrow restricted view of what the Claimant was doing at that particular moment, and a narrow restricted view in what situation the cargo was at the moment.

You cannot do that. Section 920, the Whetly case, and Friend versus Briton, all say in effect, look, if there is any question in your mind as a judge, resolve it in favor of the Claimant, and if that is not enough, then I refer you to the House of Representatives 90 Report in 19—I forget the number, but I will state it in my brief, and that clearly stated that the intention in making these amendments was to get a uniform Compensation Act to apply to longshoremen.

If Your Honor, or the Appeals Court, are going to decide that the particular activity, as of a particular moment, is controlling, I say it is permitting a gross mistake.

Colloquy.

So far you have had nothing but clear cut accidents, a man working on a truck, and a man working on the lighter, and the lighter does not apply, or the man working on the string piece, et cetera.

You know, we have had accidents with the man at the hiring hall going to the pier to load, and to unload, and God knows what, and he is hit by a car in the street before he gets to the pier. What are you going to say about that man, because I have such a case?

What do you do with the man who says, "okay, coffee break. You, Joe Blow, you're the last man here, and go get the coffee for the ten boys," and this man sometimes, not all the time, but sometimes, has to leave the terminal area, and comes back and slips and falls on the way. I have such a case.

How are you going to tie that in? The intent of Congress is that all longshoremen come under this Act. If you are going to decide the case by looking at the activity, you are doing a gross injustice to the Claimant.

In this particular case you have to look at the overall activity, Your Honor. To do it any other way would put the jurisdiction within the control of the terminal operator. How ten days' time right now, and they give you one day's time, and if you are lucky you have a free time.

I am alleging that all these documents refer to a ship. When the man comes to pick it up, the Campeche, the Campeche, or whatever ship is involved, is clearly tying up the cargo to the particular ship, and you want the employer, if he is mad enough to have it his way, if you are going to decide along those lines—leave that stuff out.

Just notify the shipper that he has cargo to pick up. I say to Your Honor to make any decision which would give the stevedoring company or the terminal operating company, to give them the power to change their operation a little bit, or conform to the narrow restrictive avenue of the

Colloquy.

decision of error, and as sure as I am standing here, they will change their method of operation.

One of the examples in this case, and Mr. Minucci was asked if the Pittston Stevedoring Company was in the warehousing business, and he said that they were, and as far as he is concerned they are, and they are, and you have to treat it differently, and why does he treat it as the same company, because they are the same principals.

You must take the temptation out of the manipulation of the stevedoring company, or the insurance company, as the case may be, in avoiding any narrow restriction in coming to a decision on this particular point, or any case on the point of jurisdiction, Your Honor.

Thank you for your time.

Judge Bernstein: Thank you, Mr. Gucciardo, for a very eloquent summation.

Mr. Manes?

Mr. Manes: I think, Your Honor, that Mr. Gucciardo's summation, as you put it, was more properly directed to an appellant branch, rather than to that of a fact-finder.

We have to deal here with the facts, and jurisdiction is a factual issue. Do the facts in this case sustain jurisdiction under the Longshoremen's and Harbor Workers' Act? It was the extent that the longshoremen should be covered under that statute.

Mr. Gucciardo has submitted for your consideration a case which I know you know about, Avento versus Hellenic Lines. In that case cargo was placed in a specially locked crib for security reasons for four days, and while it was being removed after the four day period an injury occurred.

I can understand under those circumstances how that might be considered a continuance of the unloading operation. The reason for the storage of the cargo was for security purposes, and there only a short time, but in this case we have a period of some 133 days, and as in-

Colloquy.

licated by the evidence, that there may be a reason for the nonremoval of the cargo, and that it was due to various reasons.

Apparently there has been some damage done to the coffee bags, but that damage was repaired, as the evidence indicates, through Mr. Gucciardo pointing it out, on February 13th or 14th of 1973 as indicated in the activities of the cooper.

After it had been repaired it then remained not picked up for whatever reason. Possibly one good reason was that 15,000 odd bags of cargo consigned.

In any event, it stayed in the warehouse area for 133 days, and nothing which would indicate that that constitutes part of a continuous unloading operation. Whatever the reason it remained there, it certainly was not the result of some unloading operation, and we suggest on the actual matter in this case that a ruling be made that under these facts jurisdiction be not accepted under the Longshoremen's and Harbor Workers' Act for the reason of the storage for 133 days, and not being considered reasonable to conclude that that remains a continual situation, or has any relation to loading or unloading operations.

Thank you.

Judge Bernstein: Thank you, Mr. Manes.

Incidentally, on the question of jurisdiction that you referred to, Mr. Gucciardo, it is my opinion, without indicating how I will decide on this case, that not all injuries of longshoremen who are covered employees, employed by covered employers, arising out of and during the course of their employment are within the jurisdiction of the Act.

I have so decided in two cases, and if you are interested in the names of the cases, they are Purdy versus Jacksonville Shipyards, and O'Leary versus—I forget the name of that case, but I decided that on the 15th day of November. It is a recent case.

Colloquy.

Mr. Gucciardo: Your Honor, is that Purdy case up to the Benefits Review Board?

Judge Bernstein: No; that was not appealed.

O'Leary was decided on November 15, 1974, and you might find them of interest in connection with some of the problems mentioned in your closing statement, which I do not think they have issues which are similar to the issues of this case, however.

With regard to post-hearing briefs, is December 20 agreeable to counsel?

Mr. Manes: Yes, Your Honor, fine.

Mr. Gucciardo: Yes, sir.

Judge Bernstein: And at that time I would like the application for counsel's fees.

Mr. Gucciardo: Yes, and I am applying for expert witness fees in the amount of \$75.

Judge Bernstein: Fine. Do include that along with your brief and your application.

Is there anything further?

Mr. Gucciardo: No, Your Honor.

Mr. Manes: No, thank you, Your Honor.

Judge Bernstein: The hearing is recessed, and will be terminated in accordance with applicable regulations.

(Whereupon, the hearing in the above-entitled matter was concluded.)

(59638)

Rec'd 4/23/76

Israel Adler